

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, ET AL.,)	CASE NO: 2:13-CV-00193
)	
Plaintiffs,)	CIVIL
)	
vs.)	Corpus Christi, Texas
)	
RICK PERRY, ET AL.,)	Wednesday, August 27, 2014
)	(2:03 p.m. to 2:06 p.m.)
Defendants.)	(2:06 p.m. to 2:47 p.m.)

STATUS CONFERENCE

(SEALED PORTION OMITTED)

BEFORE THE HONORABLE NELVA GONZALES RAMOS,
UNITED STATES DISTRICT JUDGE

Appearances:	See Next Page
Court Recorder:	Genay Rogan
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Proceedings recorded by electronic sound recording;
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ALICE LONDON, ESQ.

1 Corpus Christi, Texas; Wednesday, August 27, 2014; 2:03 p.m.

2 (Call to order)

3 **THE COURT:** The Court calls Cause Number 2:13-cv-193,
4 *Veasey, et al. versus Perry, et al.* And we're here on a status
5 regarding the issue of the records of the non-party
6 representatives.

7 **MR. SCOTT:** Your Honor, John Scott for the
8 Defendants. We have two examples. We've gone through a bunch
9 of documents and narrowed a bunch of the scope, so we were
10 trying to maybe get a little guidance from the Court on that to
11 narrow the scope further on the rest of the documents. Ms.
12 London has agreed to visit about anything that -- depending
13 upon how you rule today --

14 **THE COURT:** Okay.

15 **MR. SCOTT:** -- on the rest of the documents, so we
16 get a little bit of a flavor. And with your permission, if I -
17 - be okay if I give this two to the Court?

18 **MS. LONDON:** And, Judge, I'm sorry, but I disagree
19 with the characterization that that's what we're doing. I want
20 to be real clear procedurally where we are. We're not offering
21 examples. What has happened here is we had an agreement; and
22 to the extent that I'm asking the Court to enforce the
23 agreement, I want to be clear. The agreement was that we would
24 tender these highly confidential documents in seal and that the
25 State would designate what they intended to use. Once they --

1 **THE COURT:** Have we gotten there?

2 **MS. LONDON:** Yes.

3 **THE COURT:** What they intended to use.

4 **MS. LONDON:** Well, yes. Originally they said a
5 hundred percent. Today they gave me about 700 to -- 760 to 800
6 pages that they intend to use. Of the 800 pages or so that
7 they've given me, I've had the opportunity to review 542 pages.
8 I'm going to suggest that we go senator by senator. With
9 regard to Senator Ellis, I have reviewed all of the documents
10 that they have said they intend to use. We reached an
11 agreement that Bates -- Ellis Bates Numbers 49 through 66, they
12 will not use.

13 **MR. SCOTT:** That's correct.

14 **MS. LONDON:** They will -- they have also agreed that
15 Ellis documents Bates Number 3478 through 3482, they will not
16 use.

17 **MR. SCOTT:** That's correct.

18 **MS. LONDON:** So with regard to Senator Ellis, we are
19 not down to examples. We are down to exactly two documents.

20 **THE COURT:** Okay.

21 **MS. LONDON:** And we are asking the Court to rule on
22 those two documents. And then after that, with regard to
23 Senator Ellis, we are done.

24 **THE COURT:** Okay. What is it then?

25 **MR. SCOTT:** So the two documents, your Honor, are

1 Bates Number 1171 through 1172, and that's RE-PRIV 1171 to
2 1172, and that's one that's -- at the top it has "Gmail" on it.
3 This is a document that I believe was asserted a legislative
4 privilege at first, and there may be some other objections.
5 Our obvious interest in this is in a number of areas, but
6 specifically in the one, two, three, four, fifth paragraph.
7 This morning the Court introduced -- or allowed I believe 43
8 declarations to come in relating to the number if EICs issued.
9 This document, second sentence --

10 (Sealed portion omitted)

11 THE COURT: Okay, where are you? Paragraph five on?

12 MR. SCOTT: Paragraph one, two, three, four, five,
13 yes, your Honor.

14 THE COURT: On 1171?

15 MR. SCOTT: Page 1171.

16 THE COURT: Okay, I see.

17 MR. SCOTT: Second sentence. And also the --

18 THE COURT: Can I write on this? Is this extra?

19 MR. SCOTT: Yes, yes --

20 THE COURT: Okay.

21 MR. SCOTT: -- that's your copy, your Honor.

22 MS. LONDON: And, Judge, so the record is clear, we
23 are offering these documents under seal. And so by having this
24 discussion, we're not waiving --

25 THE COURT: Okay.

1 **MS. LONDON:** And if it would for me to state my
2 objections first --

3 **THE COURT:** Go ahead.

4 **MS. LONDON:** -- so that you can have the parameter.
5 This is a document that was in Senator Ellis's file. It is
6 written by a person who is not going to be a witness in this
7 case. It is an opinion by someone whose opinion I think has no
8 relevance to any --

9 **THE COURT:** Who is it in relation to --

10 **MS. LONDON:** Sondra Haltom (phonetic) is with the
11 Democratic party.

12 **THE COURT:** So it was written by her to the Senator?

13 **MS. LONDON:** It appears to be written -- Senator
14 Ellis has it because David Edmondson is his general counsel.
15 So this was written in 2011 by someone with the Democratic
16 party expressing her opinion to the general counsel of Senator
17 Ellis.

18 **THE COURT:** Okay. Let me read it real quick. Okay,
19 anything further?

20 **MS. LONDON:** So, Judge, essentially this is -- gets
21 to exactly -- well, let me start off by saying there are two
22 sets of objections here. One is general relevance. There is
23 nothing in this document that is evidentiary as to an ultimate
24 decision that the Court needs to make on motive and intent as
25 to Senate Bill 14. And that's just a general relevance

1 objection. And then secondly, there is a hearsay objection
2 that this is an email that my client can say yes, it is an
3 authentic email they got, but it is going to ultimately be a
4 hearsay statement by Sondra Haltom.

5 **THE COURT:** Okay.

6 **MS. LONDON:** Then you get to the legislative
7 privilege argument, which this is part of the work product that
8 Senator Ellis had in formulating his deliberative process of
9 how he was going to vote. And the theme that you have on all
10 of my arguments is you have a guy who voted against Senate Bill
11 14, and how he got there, who persuaded him, why he got there,
12 it's our position has no relevance. And if we're going to do
13 the goose and gander thing, the State has to show that this
14 document has relevance to their claim. And our position is
15 that this document does not have relevance to their claim.

16 **THE COURT:** Anything further, Mr. Scott?

17 **MR. SCOTT:** Well, your Honor, the universe of Texas
18 documents where a legislative privilege has been asserted has
19 been because there was communication between legislators and/or
20 their staff about matters that were then pending or proposed to
21 be pending. That is a hundred percent of that universe of
22 documents. Some of the documents that are being attempted to
23 be released by the Department of Justice and is going to be
24 something I think for tomorrow's hearing -- or tomorrow's
25 conference call with them is a category of documents that fall

1 all within that universe. What this is, is a document that
2 involves a multitude -- multiple people that are not part of
3 the legislature, not part of the legislative staff of anyone
4 that's in the legislature, and it deals with something from
5 Senator Ellis who has been listed on the witness list and who's
6 expected to be testifying live in this case. It goes to the
7 fact of implementation. One of their contingents that they're
8 making is something's wrong with the way this bill is being
9 implemented because there's no EICs being issued. This is one
10 piece of evidence relating to impeachment of Senator Ellis and
11 statements we believe he may be saying during the course of
12 this trial. And it also makes reference to something that
13 seems to be a common thing amongst a lot of the documents,
14 which is the plan. Not real sure what "the plan" is. We're
15 still going through the documents to try and determine what
16 "the plan" is that the senators had. But to the extent there
17 is a plan out there to help effectuate the -- to stop passage
18 of it or to help provide information to the Department of
19 Justice to stop the implementation of SB 14, we think that goes
20 to the heart of some of the issues that have been raised by the
21 Plaintiffs in this case. So I guess number one is, it doesn't
22 qualify as a legislative privileged document. The fact that
23 someone asserted legislative privilege over this document is
24 absolutely incorrect use of the word -- of the privilege. And
25 then it goes to the heart of being able to impeach a potential

1 witness, a person who's identified that's going to testify live
2 at trial.

3 **THE COURT:** Okay. I guess that is the question. How
4 -- it may not come in at trial because it may not be relevant.
5 It may be hearsay. But where does it fit into the legislative
6 history privilege -- or legislative privilege?

7 **MR. SCOTT:** Well, I think from the legislative
8 history, it's not part of --

9 **THE COURT:** No, I'm --

10 **MR. SCOTT:** -- it's -- oh, not me.

11 **THE COURT:** Yeah, I'm --

12 **MR. SCOTT:** Okay, sorry.

13 **THE COURT:** -- asking Ms. London.

14 **MS. LONDON:** Yeah. Senator Ellis relied on a variety
15 of people to formulate his strategy to oppose Senate Bill 14.
16 He relied -- and part of his deliberative process was that he
17 spoke to the people that he wanted information from, and this
18 is one of the people that he collected information from. And I
19 think the legislative privilege is designed to allow
20 legislators to deliberate, formulate their process, collect
21 information, without being questioned about that or having to
22 turn over their documents regarding it.

23 **THE COURT:** But does it cover information -- I would
24 see this as coming from like a third party, not someone within
25 the staff or the office of the Senator.

1 **MS. LONDON:** This was -- David Edmonson is his staff.

2 **THE COURT:** But he's not the one that --

3 **MS. LONDON:** And he is --

4 **THE COURT:** He just forwarded this.

5 **MS. LONDON:** No, he --

6 **THE COURT:** Or no?

7 **MS. LONDON:** This is sent -- David Edmonson has had
8 contact with the Democratic party. He's collecting information
9 for the Senator. She responds by sending her opinion and her
10 information to the Senator's staff. And it's in his file,
11 which they have subpoenaed, and they are now trying to use it
12 to impeach him. That is exactly what the legislative privilege
13 is supposed to protect against. It's supposed to allow
14 senators to collect information, do their research, communicate
15 with who they want, formulate their strategy. And in this
16 case, Senator Ellis had a failed strategy. He voted against
17 it, he didn't win. So it -- I mean, I think the Court has
18 multiple options here to say if Mr. Scott is correct, that it's
19 not from the legislature, then what relevance does it have to
20 the Court's decision of motive and intent. If it's not from
21 the legislature, how does it inform this Court about what the
22 legislature was doing or not doing? And if it is related to
23 the legislature, it's privileged as part of what Senator Ellis
24 was doing to establish his position. And even at that, Senator
25 Ellis, who voted against it, I mean, understanding his

1 rationale --

2 **THE COURT:** Right, but I think that's a relevance
3 issue. Is it a legislative privilege matter?

4 **MS. LONDON:** Oh, I understand what you're saying.

5 **THE COURT:** You see what I'm saying?

6 **MS. LONDON:** I understand.

7 **THE COURT:** Yeah.

8 **MS. LONDON:** Judge, you're asking does this qualify
9 for the privilege?

10 **THE COURT:** Right.

11 **MS. LONDON:** Okay. I think it --

12 **THE COURT:** Because that's the whole thing. That's
13 what we're sealing -- has been matters that are -- should be
14 protected by the legislative privilege. I mean, it's a whole
15 different thing whether it's going to be admissible at trial or
16 not.

17 **MS. LONDON:** So procedurally these documents have --
18 are -- there's a motion for protective order and it's whether
19 or not in response to the subpoena we have to turn them over.
20 If you decide they're not relevant, then we don't have to turn
21 them over, and that's what we're here today about.

22 **THE COURT:** So they've been turned over --

23 **MS. LONDON:** Only --

24 **THE COURT:** -- and been reviewed but sealed, so yes.

25 **MS. LONDON:** Only for the purpose of enabling you to

1 -- enabling us to make the arguments on the protective order.

2 In other words --

3 **THE COURT:** Okay.

4 **MS. LONDON:** -- I let them have the documents so we
5 could have intelligent conversations on the protective order.
6 And if you rule that they're not relevant, then I don't have to
7 turn it over to the subpoena if --

8 **THE COURT:** Yeah, I got it. I was confused in my --

9 **MS. LONDON:** Yeah, it is confusing.

10 **THE COURT:** Okay, anything further from the State?

11 **MR. SCOTT:** I think not, your Honor.

12 **THE COURT:** The Court's going to -- if it's a motion
13 for protective order on the part of Senator Ellis, if that's
14 what's before the Court, the Court's granting that.

15 **MR. SCOTT:** And it's on this document, your Honor.

16 **THE COURT:** On eleven -- was that '72?

17 **MR. SCOTT:** It's 1171 and 1772.

18 **THE COURT:** It's 1171. I haven't looked at '72 yet.

19 **MR. SCOTT:** And, your Honor, so that we make a clear
20 record, we would like to put a copy of that that has been
21 offered, that the Court is not going to allow the Defendants to
22 make use of this document at time of trial. Is that correct?
23 Am I understanding the ruling correctly?

24 **THE COURT:** That is correct. So what are you asking,
25 that this be sealed and put -- and made a part of the record?

1 **MR. SCOTT:** Yes.

2 **THE COURT:** Okay.

3 **MR. SCOTT:** And -- or if it would be easier for us to
4 submit something to the Court to the extent we get documents
5 that fall into that category, a submission of documents that we
6 attempted to introduce as part of the record and the Court
7 denied their use, just so that we've got a complete record.

8 **THE COURT:** Okay, that's fine.

9 **MR. SCOTT:** Is that okay?

10 **THE COURT:** I'm fine with that.

11 **MS. LONDON:** Yes.

12 **MR. SCOTT:** Are you okay with that?

13 **MS. LONDON:** Yes.

14 **THE COURT:** Okay. So then I'm looking at 1706 now.

15 **MR. SCOTT:** Yes. And it's another of these documents
16 which occurred after passage, just like 1171, so it was after
17 passage of the bill. We see no attorney work product, nor was
18 there an attorney-client issue. It is a 2013 email from Mr.
19 Dunn recommending that Senator Ellis send a letter that says as
20 follows, relating to (indiscernible) with the Department of
21 Public Safety and also Bud Kennedy, who is a newspaper person
22 up in Fort Worth, the *Star-Telegram*, a political commentator.
23 And so we're -- we don't see that this document falls within
24 the legislative privilege as we understand that term.

25 **MS. LONDON:** Judge, my objection on this one is in

1 fact attorney-client. You can see that Brandon -- the top part
2 of 1706, Brandon Dudley is identified as legal counsel, and he
3 is communicating with Chad Dunn. And I'm prepared to put Mr.
4 Dunn on the stand, but at this point, Chad Dunn is acting as an
5 attorney for Senator Ellis. And so you have Chad Dunn
6 communicating with Chief of Staff Legal Counsel. And so -- and
7 David Edmondson, who's on page 1707, is also an attorney
8 working for Senator Ellis. And so my objection is attorney-
9 client.

10 **MR. SCOTT:** Well, so, that's a new argument today.
11 Does -- so that I can understand I guess the cycle of arguments
12 for this document, legislative privilege is no longer an
13 assertion. If that's the case, then let me switch the
14 attention to the -- if we could figure that out, I guess.

15 **THE COURT:** But it sounds like it's an attorney-
16 client privilege issue.

17 **MS. LONDON:** Yes.

18 **MR. SCOTT:** So attorney-client privilege would be
19 related to a scope of work, and I don't see that anything is
20 identified in this document that would say that. It simply
21 seems that it's a response to a tweet by Bud Kennedy of the
22 Fort Worth Star-Telegram relating to voter ID glitch. "The
23 Texas Department of Public Safety confirms that voter ID --
24 voter card applicants are checked first for warrants, so anyone
25 with an unpaid ticket can vote."

1 **THE COURT:** Can't.

2 **MR. SCOTT:** Or can't vote, question mark. And then,
3 "We need to dog (phonetic) into this this a.m. If true, do a
4 letter to head of BPS and to DOJ or something as soon as
5 possible." Again, this would simply be something that would
6 probably be used to go to the credibility of the witness,
7 depending upon what Senator Ellis attempts to testify to in
8 this case.

9 **MS. LONDON:** But he's getting advice from his lawyers
10 on an issue, and I think this is a document that we could
11 properly assert attorney-client privilege. As to -- and I am
12 prepared to put Mr. Dunn on the stand to address the scope of
13 work and the scope of his legal relationship with Mr. Ellis.

14 **THE COURT:** You --

15 **MR. SCOTT:** I mean, if Mr. Dunn says on the record to
16 the Court that he did this, we'll do it as a snapback document
17 and we'll give the document back --

18 **THE COURT:** Okay.

19 **MR. SCOTT:** -- if this was under -- taken as
20 attorney.

21 **MR. DUNN:** Your Honor, I've represented Senator Ellis
22 for more years than I've been able to count today. I presented
23 him for his deposition in the Section 5 photo ID case. I have
24 presented him for deposition in the redistricting cases. And
25 he routinely contacts me on various legal matters, including

1 photo ID, redistricting, and virtually any kind of legislative
2 matter that might become -- that he might want legal advice on.

3 **MR. SCOTT:** Good enough. I've handed him back my
4 copy of the document, your Honor.

5 **THE COURT:** All right, so that's agreed to.

6 **MR. SCOTT:** Yes. There are a load of other
7 documents. Let us take another minute to go through --

8 **THE COURT:** Okay.

9 **MR. SCOTT:** -- these because they may resolve a lot
10 of -- they are very similar documents. And as long --

11 **THE COURT:** So that was Senator Ellis, right? Just
12 those two.

13 **MR. SCOTT:** Yes.

14 **MS. LONDON:** We have completed Senator Ellis.

15 **THE COURT:** Okay.

16 **MR. SCOTT:** So Senator Zaffirini is the next set of
17 documents. But with the guidance of how the Court has ruled on
18 that, is that -- I want to make sure that I'm not trying to do
19 the job of the Court for you --

20 **THE COURT:** Okay.

21 **MR. SCOTT:** -- but I want to try and simplify stuff
22 as much as possible to the extent that the Court is of the
23 opinion that there are documents of opponents who voted against
24 SB 14 are not going to be relevant in this matter. I don't
25 want to go through --

1 **THE COURT:** I --

2 **MR. SCOTT:** -- every one of these documents with the
3 Court and looking --

4 **THE COURT:** You know, I really -- I didn't think this
5 was, but I don't know what you have.

6 **MR. SCOTT:** Okay. Well then let's go --

7 **THE COURT:** You know, I kind of think, yeah, you are
8 starting a little bit behind with -- if they were opponents of
9 the bill, but I don't know what's in there.

10 **MR. SCOTT:** Okay.

11 **THE COURT:** I don't know what the -- you know, I
12 can't just -- I don't think I can state generally at this point
13 -- Brandy, do you want to return those, that way you don't hold
14 onto them?

15 **(Mr. Scott/Ms. London confer)**

16 **THE COURT:** Were you all going to discuss these
17 further, or ready?

18 **MS. LONDON:** I believe we have an agreement on some
19 of these, so let me enter the agreement on the record and that
20 will help you cut this back substantially. With regard to
21 Senator Zaffirini, we have agreed that the State will not use
22 Zaffirini 17, 21, 25, 28, 31, or 34.

23 **MR. SCOTT:** That's correct.

24 **THE COURT:** Okay.

25 **MS. LONDON:** With regard to Zaffirini 75 through 105,

1 the State is withdrawing their intention to use those documents
2 as well.

3 **MR. SCOTT:** That's correct.

4 **THE COURT:** Okay.

5 **MS. LONDON:** With regard to documents 116 to 113 --

6 **MR. SCOTT:** Hundred and six.

7 **MS. LONDON:** -- 106.

8 **THE COURT:** Wait, 106?

9 **MS. LONDON:** 106 to --

10 **THE COURT:** To?

11 **MS. LONDON:** -- 113, the State withdraws their
12 intention to use those documents.

13 **MR. SCOTT:** That's correct.

14 **MS. LONDON:** With regard to documents 114 through
15 119, the State withdraws their intention to use those documents
16 as well.

17 **MR. SCOTT:** That's correct. Your Honor, the first
18 document -- for clarification on the record, on Ellis document
19 privilege RE-1171 and 1172, the Court found that that's a
20 legislative privilege document from production. I was going to
21 get clarification if I could, please.

22 **THE COURT:** I did, yes.

23 **MR. SCOTT:** Okay. And so the first document to tee
24 up is 120 to 121, your Honor.

25 **THE COURT:** One -- I'm sorry, one what?

1 **MR. SCOTT:** JZ-PRIV 120, 121.

2 **THE COURT:** Okay.

3 **MS. LONDON:** And 124 is a duplicate, so you ought to
4 put those three together.

5 **THE COURT:** One-20, 121, and 124.

6 **MS. LONDON:** And 124.

7 **THE COURT:** Okay.

8 **MR. SCOTT:** And it is a 2009 email between Senator
9 Zaffirini and a man named George Shipley. Mr. Shipley is a
10 consultant who gives advice on public relations matters, and it
11 is correspondence on how to deal at least part in parcel in
12 this one on the issue of -- and I believe it's the first use of
13 the term, "It's a poll tax" (phonetic) on page 120. Given that
14 it was an individual that's not a legislator or a member of the
15 legislative staff of Senator Zaffirini, we do not believe this
16 is -- or any other legislator, we do not believe this falls
17 within the legislative privilege.

18 **THE COURT:** Okay.

19 **MS. LONDON:** Judge, you can see that from Zaffirini
20 120, that Senator Zaffirini is communicating to George Shipley,
21 who's a consultant, asking for talking points. And this is
22 part of her deliberative process where she is collecting
23 information to formulate her strategy, albeit a failed one, and
24 she -- that led her to vote against it. The email from George
25 Shipley to her is -- you know, my legislative privilege

1 argument on the one hand is that she's collecting information,
2 this is someone she's consulting with, she's getting -- putting
3 together her documents and that is why this document turns out
4 in her file. Setting the legislative privilege aside, we also
5 filed a motion for protective order because this is exactly the
6 kind of political search where you have somebody trying to
7 reach into the legislator's files to get political information
8 that is not going to play one -- make one bit of difference in
9 this lawsuit, but it has political benefit. And they're trying
10 to get this discussion about Dohearst (phonetic) and the
11 craziness and the anti GOP stuff. But none of that is relevant
12 to any issue in this lawsuit, and so we have the relevant issue
13 there, we have the hearsay objection and -- let me just stick
14 with the relevance objection because we're talking about a
15 protective order issue here. And the legislative privilege, if
16 you believe the legislative privilege applies, then you get to
17 the five-factor analysis, and it has to be highly relevant, and
18 I don't think this is highly relevant to any issue that the
19 State intends to advance.

20 **THE COURT:** Okay. You want to address the relevance
21 issue?

22 **MR. SCOTT:** Well, I don't -- I think it's the tense
23 (phonetic) of those issues. We have no burden in this case.
24 The burden is on the party Plaintiffs in this case to prove
25 that those senator factors -- senate factors have been met

1 theoretically, and they have witnesses that they're going to
2 offer in this case to say how this was something that was
3 steamrolled over the party opponents, and the party opponents
4 did not have an opportunity to form any type of opposition to
5 it. Clearly this shows that the parties were working. And, in
6 fact, they have questioned each of the legislatures on bills as
7 far back to 2004 about what efforts they made and were
8 undertaken -- I'm sorry, 2005 forward. This is yet another of
9 those situations where this is an ongoing political battle, and
10 it shows that the parties on both sides were exercising as --
11 everything at their disposal to come up and form --

12 **THE COURT:** I was just going to say, is that in
13 dispute? I mean, are these senators going to come say they
14 didn't do anything at all to try to oppose this?

15 **MR. SCOTT:** I think that that is part and parcel --

16 **THE COURT:** Well --

17 **MR. SCOTT:** -- of the argument, that they've been
18 steamrolled by having an emergency order lifted.

19 **THE COURT:** At this time, I'm holding that this
20 document is protected by the legislative privilege, and I will
21 not order it produced based on relevance. Okay.

22 **MR. SCOTT:** The next document is 127 to 148, your
23 Honor.

24 **THE COURT:** Okay.

25 **(Mr. Scott/Ms. London confer)**

1 **MR. SCOTT:** And a lot of this is, again, I think
2 interaction between Senator Zaffirini and George Shipley. And
3 it's comments about talking points, again, collectively sets
4 out strategies that they -- and actually talks about
5 specifically SB 14. A number of the talking points that
6 they've come up with are matters that they -- are common themes
7 in this case. And specifically on page 136 of that document,
8 your Honor, and 137, these are their talking points. These are
9 still the talking points of this lawsuit. This is -- if you
10 wanted to look at a summary of the depositions that have been
11 taken in this case, those are the issues. A lot of these
12 documents show that there was a preplanned and organized effort
13 with both the Department of Justice as well as with the
14 senators who opposed this legislation to orchestrate different
15 talking points, different amendments, different issues to try
16 and stop it which, again, is just part of the legislative
17 process. I understand that. But these are issues that they've
18 raised, and these issues counterbalance the materials that
19 they're presenting and say -- and I think with a bad light they
20 try and paint -- for instance, Colby Beuck, who is -- was
21 Senator Fraser's Chief of Staff, and paint that he -- I'm
22 sorry, Senator Harless's Chief of Staff at the passage of SB
23 14, and they paint the fact that he had talking points. In
24 fact, that was one of the things that's up for the Court
25 tomorrow, I think on the other legislative documents is that

1 specific thing. This is a counterbalance for that whole issue.

2 **THE COURT:** But it's not relevant to the issue that -
3 - before the Court as to whether SB 14 violates the law, right?

4 **MR. SCOTT:** Well, but it is relevant to the senate
5 factors, right? From the senate factors to the extent -- we're
6 -- I'm trying to understand, I guess, a little more guidance in
7 this -- on this standpoint. There is one set of facts that
8 have been developed by the Plaintiffs. That is not the
9 complete story of the body, the legislative body. I mean,
10 that's where the legislative privilege derives from. The
11 public record was supposed to be what everybody looks to. We
12 are not going to be deciding this case based upon the public
13 debate and the public record. We're -- it looks like we're
14 getting down below that once we've gotten into the legislative
15 documents of all the proponents of the bill. These are simply
16 the other side of that legislative body and the documents that
17 they also had going on underneath that was part of the process
18 by which the case -- I mean, by which SB 14 was ultimately
19 passed.

20 **THE COURT:** Okay.

21 **MS. LONDON:** I think the George Shipley documents,
22 it's a consultant that Senator Zaffirini relied on. I think
23 the connection between this consultant and Zaffirini and
24 Zaffirini and the Democratic strategy is too attenuated to be
25 relevant. And the fact that she collected this as part of her

1 deliberative process is something she's entitled to do. And so
2 what I don't see Mr. Scott pointing to is any specific language
3 in any of this that is highly relevant to any issue that the
4 Court has to decide. I mean, there's no question that
5 Zaffirini consulted with a variety of people, no question she
6 voted against it, no question that she took in a lot of
7 opinions. But at the end of the day, it's not -- that's her
8 legislative privilege, and I don't see that there's something
9 highly relevant to anything that Mr. Scott needs to prove at
10 trial that is in these documents.

11 **THE COURT:** All right, same ruling by the Court. The
12 Court finds these documents are protected by the legislative
13 privilege and the Court's not going to order that they be
14 produced finding -- or based on a lack of relevance -- high
15 relevance, I guess I should say. Okay.

16 **MR. SCOTT:** Next is 149 to 154. This is another set
17 of documents that specifically -- if I could incorporate for
18 the Court --

19 **THE COURT:** And I'm sorry, 149 through what?

20 **MR. SCOTT:** 154.

21 **THE COURT:** Okay.

22 **MS. LONDON:** And my objection is attorney-client.
23 You can see it's from Ray Martinez, who's general counsel.

24 **MR. SCOTT:** And so originally I think this was
25 asserted as a legislative privilege document.

1 **THE COURT:** So if it's attorney-client privilege?

2 **MR. SCOTT:** If it's attorney-client privilege, and
3 they're asserting that is, then I --

4 **THE COURT:** Okay.

5 **MR. SCOTT:** -- yield to it and take it off the table.

6 **THE COURT:** All right.

7 **MS. LONDON:** One-55 to 172 is again a consultant's
8 work. Harold Cook was a consultant to many of the democratic
9 senators. He wrote extensively about what he thought the
10 points were that the senators need to make and how they should
11 try and defeat the bill, and it's essentially the same
12 arguments as the George Shipley that we urged before.

13 **THE COURT:** Yeah. Anything different on that, Mr.
14 Scott?

15 **MR. SCOTT:** Well, I think this also sets out --
16 here's an outside political commentator who is a big
17 commentator down in the Austin area on party politics and the
18 political matters. Here is a commentary from him that all
19 members will vote against the voter ID bill. I mean, this idea
20 that this is somehow something that was last minute again is --
21 the evidence doesn't support that. Every bit of this document
22 and every bit of all these documents goes to the heart of the
23 fact that these party opponents had an opportunity to address
24 the issues, and it was all about politics. It was a hundred
25 percent about politics. And so this -- the talking points --

1 and I will go into a little more detail on a couple of the
2 other persons who are identified within this document -- but
3 they talk about people to bring out as experts in the case. So
4 Mr. Chandler Badenson (phonetic) is identified on page 159 of
5 this document, on potential expert witnesses, backgrounds,
6 suggested questions. Toby Moore (phonetic) is someone who
7 works for the Department of Justice and organized a number of
8 the experts in this case, is identified by Harold Cook as
9 someone in this 2009 memorandum as somebody to help organize
10 expert witnesses and suggested questions. He is somebody who
11 has worked in concert with every one of these folks that are
12 coming in here to testify. The Brennan Center is someone who
13 is a participant in this litigation, again, on page 159. Mr.
14 Hebert and his fine history is identified in this document on
15 page 160. Here's the question starting on page 161 for
16 purposes of the hearings that were held on voter ID. Those
17 same hearings are the substance of the foundation for a number
18 of their experts who are here to testify in this case. They've
19 been identified, they're part and parcel of their report,
20 they've been provided at least a portion of the picture; and,
21 again, we should be able to cross examine those folks on
22 documents we just now found out about. And absent this Court
23 saying this document is not subject to a legislative privilege,
24 again, this is not a communication between legislators or their
25 staffs about pending litigation -- about pending legislation.

1 This is an outside political consultant lining up people to
2 help the opponents of the voter ID laws that were proposed.

3 **MS. LONDON:** That -- the characterization of Harold
4 Cook, let me add this fact. He was the Senate Caucus Director
5 for the Democrats, so he is staff in a sense. And secondly, I
6 would defer to Mr. Dunn, but I do not believe that it is true
7 that there's any expert who has relied on or reviewed or seen
8 this document. I think that is incorrect.

9 **MR. DUNN:** These documents, that is a correct
10 statement. None of the experts have seen these documents, and
11 they've only been produced and made --

12 **THE COURT:** Same ruling, which is subject to the
13 legislative privilege and Court's not going to order it
14 produced based on relevance.

15 **MR. SCOTT:** Your Honor, from the standpoint of -- for
16 just housekeeping matters, will this be something at least from
17 a -- doing the offer of proof as well to the different
18 witnesses that afternoon or that evening, we'll be able to go
19 ask them some questions on these documents under the sealed
20 process?

21 **THE COURT:** I know that Defendants have brought up in
22 the past they're going to need to -- wanted to present some
23 evidence through an offer of proof. And, I mean, I --

24 **MR. SCOTT:** I think we're getting into that, right.

25 **THE COURT:** That's going to be allowed, but I don't

1 know what you're going to --

2 **MR. SCOTT:** Okay.

3 **THE COURT:** You know, I don't know what you're going
4 to have. That's what I was asking earlier when we were doing -
5 - talking about logistics, is what are we looking at in terms
6 of volume?

7 **MR. SCOTT:** And this is one of those areas. I didn't
8 know how the Court was going to rule on the legislative
9 privilege issue. So the next set is 155 to 172; is that right?
10 Oh, it's now -- the last set is skipping over to Document 179,
11 your Honor. And it goes through 183, although I see Mr.
12 Martinez's name on that, so this may not be a legislative
13 privilege.

14 **MS. LONDON:** It's attorney-client.

15 **MR. SCOTT:** And so if this is attorney-client, then I
16 take Ms. London's word for that and I'll hand it back to you as
17 well.

18 **THE COURT:** Okay.

19 **MR. SCOTT:** That is all that group of documents that
20 we worked our way through.

21 **MS. LONDON:** And so this will help us to I think
22 narrow what we have left --

23 **THE COURT:** Okay.

24 **MS. LONDON:** -- which becomes a lot more manageable.
25 I think we made it halfway through the documents. And so what

1 I would request is that we be able to confer and finish
2 tomorrow if there are any documents we can't reach agreement
3 on.

4 **THE COURT:** That's fine. What time do you all want
5 to -- would you give this back to them, Brandy? What time do
6 you want to confer tomorrow with the Court -- or to meet --
7 conference with the Court?

8 **MR. SCOTT:** You want to -- let's --

9 **MS. LONDON:** First thing in the morning?

10 **MR. SCOTT:** Yeah, that's good. You want to try and
11 get out early, I would think, so --

12 **MS. LONDON:** I would like to --

13 **MR. SCOTT:** Ten o'clock, 9:00 o'clock, 8:00 o'clock?

14 **THE COURT:** Yeah, tomorrow we're good. Ten o'clock
15 will be good.

16 **MR. SCOTT:** Okay.

17 **MS. LONDON:** We will work diligently --

18 **THE COURT:** Okay.

19 **MS. LONDON:** -- to narrow this down.

20 **MR. SCOTT:** Thank you, your Honor.

21 **THE COURT:** Now, I won't have the documents because
22 you all are taking them. I don't know --

23 **MR. SCOTT:** No, no. I -- we'll be -- I'm here
24 through --

25 **THE COURT:** Okay. So you're --

1 **MR. SCOTT:** -- the next 24 --

2 **THE COURT:** -- going to be here in Court so --

3 **MR. SCOTT:** Yes. I'll have --

4 **THE COURT:** -- you'll have the documents?

5 **MR. SCOTT:** -- the documents and I'll --

6 **THE COURT:** Okay.

7 **MR. SCOTT:** -- bringing those with us.

8 **THE COURT:** But you're leaving, right?

9 **MS. LONDON:** No, no. I --

10 **THE COURT:** Oh?

11 **MS. LONDON:** -- am going to stay over.

12 **THE COURT:** Okay.

13 **MS. LONDON:** I'm just going to wear the same clothes,
14 but I will stay over because I appreciate --

15 **MR. SCOTT:** I'm going to --

16 **MS. LONDON:** -- appreciate the tight schedule
17 everyone's on.

18 **THE COURT:** Okay, very good then. We'll see you all
19 at 10:00.

20 **MR. DUNN:** Your Honor, may I deal with one issue that
21 -- so there's no confusion here? If -- my representation that
22 these experts haven't seen these documents is accurate.
23 They're in fact stamped "attorneys' eyes only." And so we
24 wouldn't show them to the expert. But if Mr. Scott's going to
25 be doing an offer of proof with the experts in the afternoon,

1 then we think it's only fair the experts see them in advance so
2 they can read them and develop whatever opinion they might
3 have.

4 **THE COURT:** Okay. If you're going to do that, let
5 them know.

6 **MR. SCOTT:** And I -- realistically, I'm just going to
7 go through and say that, "You didn't get this, you didn't get
8 this, you didn't get this" --

9 **MS. LONDON:** Well --

10 **MR. DUNN:** Okay.

11 **MR. SCOTT:** (indiscernible)

12 **MS. LONDON:** -- Judge, this was a subpoena issue.
13 And if you have ruled there's a legislative privilege, then I
14 in theory have not turned them over to him and, therefore, he
15 can't use them.

16 **MR. SCOTT:** From the standpoint of a record, absent
17 them being in the record, there's no way to establish for the
18 Court of Appeals what they've looked at and whether there is --

19 **THE COURT:** I think what I have ruled -- those
20 specific documents probably have to be sealed with the Court,
21 what I've looked at and ruled on. But I don't know about you
22 showing them to experts. They can be in the record, sealed --

23 **MS. LONDON:** Right.

24 **THE COURT:** -- based on the Court's ruling just to
25 have the record for appeal.

1 **MR. SCOTT:** And let me visit with my appellate guys
2 and see --

3 **THE COURT:** Okay. But you all --

4 **MR. SCOTT:** -- what the best way to do that is.

5 **THE COURT:** -- I didn't keep anything, so that's what
6 you had said you would provide in a sealed --

7 **MR. SCOTT:** Yes.

8 **THE COURT:** -- manner.

9 **MS. LONDON:** And with that regard, the notebook that
10 I --

11 **THE COURT:** You want it back?

12 **MS. LONDON:** Yes, please.

13 **THE COURT:** Okay.

14 **(Mr. Scott/Ms. London confer)**

15 **THE COURT:** I don't have anything. I've been
16 specifically giving everything back. I don't want --

17 **MS. LONDON:** Thank you.

18 **MR. SCOTT:** The hot potato.

19 **THE COURT:** -- anything.

20 **MS. LONDON:** Okay.

21 **MR. DUNN:** So, your Honor, we don't plan to be here,
22 Mr. Hebert and I, tomorrow.

23 **THE COURT:** Okay.

24 **MR. HEBERT:** May I follow up, your Honor. This is
25 Gerry Hebert for the Veasey Plaintiffs. In Mr. Scott's

1 representation that he's simply going to use the documents with
2 the potential experts and say -- I think the offer of proof
3 should simply be under seal --

4 **THE COURT:** I know. I think I just addressed that
5 and said I think it needs to be in the record under sealed what
6 I've addressed, but I don't think they would then be discussed
7 with witnesses.

8 **MR. SCOTT:** And I'm going to visit with my appellate
9 guys and see what they think the best form to make sure we're
10 protected on appeal and that you all have got -- then we may
11 not even have to do the offer of proof.

12 **THE COURT:** Yeah. I mean, I think it has --

13 **MR. HEBERT:** That's easy.

14 **THE COURT:** -- in the record sealed --

15 **MR. SCOTT:** Sure.

16 **MR. HEBERT:** Yes.

17 **THE COURT:** -- for appellate purposes, but I don't
18 think we go beyond that. So, okay, anything else for today?

19 **MR. SCOTT:** I think that's got it from the State's
20 standpoint.

21 **(Judge/ERO confer)**

22 **THE COURT:** We didn't really discuss -- there was one
23 little portion you mentioned, but do we need to seal the
24 hearing? There was one little comment made --

25 **MR. SCOTT:** I read one thing out of it.

1 **THE COURT:** -- read -- you read one little thing out
2 of that first sheet. If you all want to seal that.

3 **MR. SCOTT:** It's up to you.

4 **THE COURT:** About the -- I don't know that we need to
5 seal the whole hearing because we were just really talking in
6 terms of numbers.

7 **MR. SCOTT:** There's the exact quote.

8 **MR. DUNN:** I think just the section that was quoted.
9 Perhaps if the transcript's ordered --

10 **MS. LONDON:** Yeah.

11 **MR. DUNN:** -- we'll -- we could be delivered, just
12 the attorneys, preliminary copy, we'll mark just that section.

13 **THE COURT:** Yeah. I guess we can seal that, right,
14 Genay? Just that comment that was read. But other than that,
15 we just referred to the exhibit number.

16 **MS. LONDON:** Correct.

17 **THE COURT:** Okay. So that's what we'll do, ordered
18 sealed regarding that comment.

19 **MR. SCOTT:** So from a clarification standpoint, if we
20 see stuff that is attorney-client -- from an attorney, my hunch
21 is if they represent to me, I think we can do that with a
22 simple offer to the Court, and that's going to be sufficient
23 from our standpoint. But --

24 **THE COURT:** I mean, if you're not going to ask for
25 the Court to --

1 **MR. SCOTT:** Go through that.

2 **THE COURT:** -- analyze whether it -- that privilege
3 applies --

4 **MR. SCOTT:** Yes.

5 **THE COURT:** -- or not, then --

6 **MR. SCOTT:** Yes, okay. So to the extent we see
7 something we don't think, we're still -- I didn't want to -- I
8 think we want to make sure we're correct.

9 **THE COURT:** If you don't think it's attorney-client
10 privilege, you need to let the Court know --

11 **MR. SCOTT:** Absolutely.

12 **THE COURT:** -- so I can make a --

13 **MR. SCOTT:** Absolutely.

14 **THE COURT:** -- decision on that. All right?

15 **MR. SCOTT:** Yes.

16 **THE COURT:** Okay. So is that clear?

17 **MR. SCOTT:** Yes.

18 **THE COURT:** If there's nothing else, you're excused.

19 **MR. SCOTT:** Thank you.

20 **(This proceeding was adjourned at 2:47 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

August 29, 2014

TONI HUDSON, TRANSCRIBER